

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MANZANO RODEROS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Mar 08 2022 03:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83785

RESPONDENT'S ANSWERING BRIEF

**Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County**

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**Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County**

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction after a jury trial finding Michael Roderos (“Appellant”) guilty of Child Abuse, Neglect, or Endangerment, Battery Constituting Domestic Violence, and Coercion Constituting Domestic Violence. Appellant’s Opening Brief (“AOB”). The Judgment of Conviction was filed on November 5, 2021. 2 Appellant’s Appendix (“AA”) at 163-166. The Notice of Appeal was filed on November 10, 2021. 2 AA at 168. This Court has jurisdiction over this appeal under NRS 177.015 which provides for the right to appeal a final judgment in a criminal case.

ROUTING STATEMENT

This appeal is presumptively retained by the Supreme Court because it relates to a conviction for two Category B felonies. NRAP 17(b)(2)(A).

STATEMENT OF THE ISSUES

- I. Whether the Prosecutor Improperly Vouched for the Complaining Witness's Testimony**
- II. Whether the State Elicited Improper Character Evidence at Trial**
- III. Whether the District Court Improperly Limited Appellant's Right to Present a Defense**
- IV. Whether There Was Sufficient Evidence Presented at Trial to Uphold Appellant's Conviction**
- V. Whether Cumulative Errors Warrants Reversal of the Convictions**

STATEMENT OF THE CASE

On August 22, 2019, the State filed a Criminal Complaint charging Michael Roderos ("Appellant") with: one count of Child Abuse, Neglect, or Endangerment (Count One) and one count of Battery Constituting Domestic Violence (Count Two). 1 AA 1-2.

On June 2, 2020, the State filed a Second Amended Information charging Appellant with the additional count of Coercion Constituting Domestic Violence (Count Three). 1 AA 15-16.

On August 12, 2021, following a jury trial, Appellant was found guilty on all counts. 2 AA 147. On November 5, 2021, Appellant's Judgment of Conviction was filed, sentencing Appellant on Count One to twenty-eight (28) to seventy two (72) months; Count Two to credit for time served; and Count Three to twenty eight (28) to seventy two (72) months, with Counts One and Three to run consecutively. 2 AA at 163-166.

On November 10, 2021, Appellant filed his notice of appeal. 2 AA at 168. On February 7, 2022, Appellant filed Appellant's Opening Brief. The State's Respondent's Brief now follows.

STATEMENT OF FACTS

During August of 2019, Noelani Roderos ("Noelani") was staying with her step-mother Samantha Roderos ("Samantha") and Appellant. 2 AA at 47. Appellant would constantly drink and play loud music in the garage. 2 AA at 47-48. On August 18, 2019, Noelani and Samantha were traveling back to her house from Los Angeles. 2 AA at 49. When they got home, Samantha and Appellant began arguing in the garage. 2 AA at 50-51. Samantha asked Noelani to come down to the garage. 2 AA at 51. When Noelani got down there, Appellant got in her face and yelled at her, and placed his hand next to her stomach as if he was going to punch her. Id. Noelani was pressed against the door and she could not escape. Id.

Samantha intervened and told Appellant to get off of Noelani. 2 AA at 53. Appellant responded by grabbing Samantha's wrists and held her hands above her head. Id. Meanwhile, Noelani went back upstairs to pack a bag to leave. 2 AA at 54. She called her best friend McKenzie Roberts to come and pick her up. Id. Then, Appellant came back upstairs and continued to yell at Noelani. 2 AA at 55. When Noelani began to say something to Appellant, Appellant hit her across the face with

the back of his hand breaking her glasses. Id. When Noelani looked back at Appellant, Appellant hit her again. Id.

After Appellant hit Noelani, he took her downstairs. 2 AA at 57. However, when Appellant grabbed at her ankle to drag her down the stairs, she was able to evade him and ran back upstairs to her room, locking the door behind her. Id. A few minutes after, Samantha came up to Noelani's room and they attempted to leave together. 2 AA at 58. However, when they got to the front door, Appellant blocked the door and tried to grab Noelani's bags so she could not leave. Id. Eventually, Noelani was able to leave and get into her friend's dad's car. 2 AA at 60-61. Once they drove around the corner, they called the police. 2 AA at 61.

SUMMARY OF THE ARGUMENT

At trial, the prosecution's questioning of Samantha was proper because he did not vouch for her. His statement that she was "doing great" had nothing to do with her credibility. Next, the evidence that Appellant lost his job as a result of being charged was waived because Appellant failed to object to the evidence at trial.

Further, the district court's ruling that Appellant could not admit evidence of Noelani's prior inconsistent statement because Appellant did not confront her with the statement during her testimony was correct. Regardless, Appellant did not suffer any prejudice because the evidence was overwhelming. The only evidence that did not support Appellant's conviction was his own self-serving testimony. Finally,

Appellant does not assert any meritorious claims of error, thus there is no cumulative error.

ARGUMENT

I. THE PROSECUTION’S QUESTIONING OF MRS. RODEROS WAS PROPER

Appellant claims the Prosecutor improperly vouched for Samantha Roderos’s (“Samantha”) testimony during trial. However, this claim fails on the merits.

Claims of prosecutorial misconduct that have not been objected to at trial will not be reviewed on appeal unless they constitute “plain error.” Leonard v. State, 17 P.3d 397, 415 (2001); See Mitchell v. State, 114 Nev. 1417, 971 P.2d 813, 819 (1998); Rippo v. State, 113 Nev. 1239, 946 P.2d 1017, 1030 (1997). The standard of review for prosecutorial misconduct rests upon Appellant showing “that the remarks made by the prosecutor were ‘patently prejudicial.’” Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (*citing* Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant’s right to have a fair trial, not necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The relevant inquiry is whether the prosecutor’s statements so contaminated the proceedings with unfairness as to make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal rule of law, he was denied

a substantial right, and as a result, he was materially prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

Appellant argues the prosecutor vouched for Samantha when she testified she had not slept very much the night prior by responding “[y]ou’re doing great.” AOB at 6, 2 AA at 33. This claim is meritless.

The prosecutor did not vouch for Samantha when she testified. A prosecutor improperly vouches for a witness when he or she offers personal assurance of the witness’ veracity or suggests their testimony is supported by information not introduced as evidence. U.S. v. Sanchez, 176 F.3d 1214, 1224, (1999). Credibility is a matter to be decided by the jury. Id.

The prosecutor’s statement, “You’re doing great,” was unrelated to Samantha’s veracity or credibility. 2 AA at 33. This was merely an assurance because she seemed to be tired from sleeping only two hours the night before. The statement did not “tip the scales in the State’s favor,” and did not make the proceedings so unfair that it was a denial of due process. AOB at 6. Plainly, the prosecutor did not vouch for his witness. Therefore, Appellant’s claim fails on the merits.

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II. THE EVIDENCE WAS NOT CHARACTER EVIDENCE

Appellant contends that Samantha's testimony that Appellant lost his job because of the charges in this case constituted inadmissible character evidence fails on the merits.

The evidence is not character evidence. NRS 48.045 prohibits evidence of a person's character for the purpose of proving that the person acted in conformity with that character. Here, the evidence that Appellant lost his job as a result of being charged with his crimes was not character evidence. The fact that Appellant lost his job is directly related to this case, this was not a separate act used to evidence his guilt. Further, the evidence was not prejudicial. Appellant states the prejudicial effect of the evidence "cannot be overstated." AOB at 8. However, the prejudicial effect was clearly understated as Appellant does not explain how or why it was prejudicial. Appellant does not argue, and the evidence does not indicate that Appellant was fired because his employer conducted its own investigation and concluded he was guilty. The evidence shows that he was fired because he was charged with domestic violence. Therefore, the evidence was not character evidence and was not prejudicial.

Furthermore, Appellant raises this claim even though he failed to object on the grounds he now raises during testimony. His failure to object amounts to waiver and, thus, it is only reviewable for plain error. Dermody v. City of Reno, 113 Nev.

207 at 210-11, 931 P.2d 1354 at 1357 (1997), Chavez v. State, 125 Nev. 328, 345, 213 P.3d 476, 488 (2009). Plain error review asks:

To amount to plain error, the ‘error must be so unmistakable that it is apparent from a casual inspection of the record.’” Vega v. State, 126 Nev. __, __, 236 P.3d 632, 637 (2010) (quoting Nelson, 123 Nev. at 543, 170 P.3d at 524). In addition, “the defendant [must] demonstrate [] that the error affected his or her substantial rights, by causing ‘actual prejudice or a miscarriage of justice.’” Valdez, 124 Nev. at 1190, 196 P.3d at 477 (quoting Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)). Thus, reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error was prejudicial to his substantial rights.

Martimorellan v. State, 131 Nev. 43, 49, 343 P.3d 590, 594 (2015).

Appellant waived this claim because he failed to object to the evidence at trial. At trial, the question and answer were clear. After Samantha testified that Appellant was fired, the State followed by asking, “Because Varian doesn’t tolerate any sort of domestic violence or any aggression like that,” and Samantha answered affirmatively. Appellant has no argument and no viable claim as to why he did not object at trial. Therefore, the claim was waived and must meet the plain error standard.

This claim does not meet the plain error standard because Appellant has not shown the error affected his substantial rights and Appellant did not suffer any prejudice. Before that evidence was presented, Samantha testified to hearing a bang

and a scream from Noelani. 2 AA at 29. Then, when she checked on Noelani, her glasses were gone, and she had a black eye. Id. Next, Noelani testified and clearly identified Appellant as the perpetrator, and there were multiple photos of the bruising to Noelani's eye. 2 AA at 51-57. There was sufficient evidence presented at trial to support Appellant's conviction. There is no evidence the jury relied on this evidence in convicting Appellant because this was the only time during the trial Appellant losing his job was mentioned and it was not argued by the State in Opening or Closing Arguments.

Therefore, this Court should deny Appellant's claim because it fails to meet the plain error standard.

III. THE DISTRICT COURT'S RULING WAS CORRECT AND IT DID NOT LIMIT APPELLANT'S DEFENSE

At trial, appellant sought to elicit testimony from one of the on-scene officers regarding an inconsistent statement Noelani made to the officer. 2 AA at 77-78. The statement concerned whether Noelani said Appellant hit her with his left or right hand. Id. The State objected on hearsay grounds and the court sustained the objection. 2 AA at 78-79. Presently, Appellant claims the court's ruling prevented Appellant from raising the defense that Noelani had lied when she said Appellant hit her. AOB at 8-10. However, this claim is meritless because the court's ruling was correct.

This Court reviews the district court's admission of evidence for an abuse of discretion. Thomas v. State, 122 Nev. 1361, 1370 (2006). An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason. Jackson v. State, 117 Nev. 116, 120 (2001).

District courts have substantial latitude to control the order and mode of the presentation of evidence to effectively pursue the ascertainment of truth and to "avoid needless consumption of time." NRS 50.115(1)(b). The United States Supreme Court has consistently recognized the vital role judges play during trials as "the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law." Quercia v. U.S., 289 U.S. 466, 469 (1933). As such, trial judges must have broad power to handle and address the complexities of trial as they arise. Geders v. U.S., 425 U.S. 80, 86 (1976).

Pursuant to NRS 51.035, hearsay is defined and an out of court statement offered to prove the truth of the matter asserted. However, a statement is not hearsay if it is inconsistent with the declarant's testimony and the declarant is subject to cross-examination concerning the statement. Crowley v. State, 120 Nev. 30, 35, 83 P.3d 282, 286 (2004); NRS 51.035. NRS 50.135(2) precludes admission of extrinsic evidence of a prior inconsistent statement unless the witness is afforded an opportunity to explain or deny the statement and the opposite party is afforded an opportunity to interrogate them. Id.

Here, the district court sustained the objection because Appellant did not confront Noelani with her prior inconsistent statement during her testimony, and then attempted to admit the statement in violation of NRS 50.135(2). 2 AA 77-79. The district court's ruling was correct. Appellant failed to confront Noelani with the statement during her testimony and thus failed to give her the opportunity to explain or deny the statement. If Appellant wanted to impeach Noelani with her prior inconsistent statement that she made to the officer, Appellant should have impeached her with the statement during her testimony. Appellant has not argued nor presented any evidence that he was unable to confront Noelani with the statement during her testimony.

Further, a court's evidentiary ruling will not violate a defendant's right to present a defense so long as the ruling is not arbitrary or disproportionate to the purposes they are designed to serve. United States v. Scheffer, 523 U.S. 303, 308 (1998). Here, the district court's ruling was consistent with the rules of evidence. Therefore, the rulings were not arbitrary or disproportionate, and did not restrict Appellant's right to present a defense. Therefore, the district court's ruling should be affirmed.

Lastly, the court's ruling did not limit Appellant's ability to present a defense, and he did not suffer prejudice as a result. First, Appellant had the opportunity to present his defense. He could have confronted Noelani with her inconsistent

statement during her testimony, which would have supported his defense that she lied about the entire thing. Appellant had the opportunity to present this defense but failed to do so and gives no explanation for why he did not. Thus, his claim he did not have the opportunity to present this defense is belied by the record. Second, Appellant did not suffer prejudice. The evidence in this case was overwhelming. Appellant's defense at trial was that he never struck Noelani, but when he was talking with Noelani, he wanted to take her glasses off to look her in the eye and accidentally scratched her face as he took her glasses off. 2 AA at 101-102.

However, the evidence does not support that defense. Samantha testified that she heard a bang and then heard Noelani scream. 2 AA at 42-43. It is highly unlikely anyone could cause a bang noise by taking glasses off. Additionally, Noelani testified that Appellant pinned her against the wall, then when she went to her room, he went up to her room and back handed her twice across her face during an argument. 2 AA at 51-54. Photos presented at trial showed bruising to Noelani's face immediately after the incident. 2 AA at 56-57. Taking glasses off someone's face could not cause a bruise. The only evidence that supported Appellant's defense was his own self-serving testimony. Therefore, Appellant did not suffer prejudice because the evidence in the case was overwhelming, and the court's ruling should be affirmed.

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IV. SUFFICIENT EVIDENCE WAS PRESENTED AT TRIAL

Appellant contends that there was insufficient evidence presented at trial to sustain the jury's finding of guilty. However, this claim is meritless because it is belied by the record.

The Nevada Supreme Court has found that in reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Origel-Candido, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984); see also Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979). In State v. Walker, 109 Nev. 683, 685 857 P.2d 1, 2 (1993), this Court delineated the proper standard of review to be utilized when analyzing a claim of insufficiency of evidence:

Insufficiency of the evidence occurs where the prosecutor has not produced a minimum threshold of evidence upon which a conviction may be based. Therefore, even if the evidence presented at trial were believed by the jury, it would be insufficient to sustain a conviction, as it could not convince a reasonable and fairminded jury of guilt beyond a reasonable doubt. Id.

Furthermore, the Nevada Supreme Court has ruled it will not reverse a verdict even if the verdict is contrary to the evidence where there is substantial evidence to support it. State v. Varga, 66 Nev. 102, 117, 205 P.2d 803, 810 (1949).

Moreover, this Court has specifically stated that “[c]ircumstantial evidence alone may sustain a conviction.” McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992); see also Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992). The rationale behind this rule is that the trier of fact “may reasonably rely upon circumstantial evidence; to conclude otherwise would mean that a criminal could commit a secret murder, destroy the body of the victim, and escape punishment despite convincing circumstantial evidence against him or her.” Williams v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980) *citing* People v. Scott, 176 Cal. App. 2nd 458, 1 Cal. Rptr. 600 (1959).

First, Appellant claims the “State presented a ‘he-said, she-said’ case and did not prove beyond a reasonable doubt that Appellant struck Noelani at all. AOB at 11. However, Appellant asks this Court to re-weigh the evidence and the credibility of the witnesses. The Nevada Supreme Court determined “it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses.” Origel-Candido, 114 Nev. 378, 381, 956 P.2d 1378, 1380. (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972). This does not require this Court to decide whether “it believes that the evidence at the trial established guilt beyond

a reasonable doubt.” Jackson v. Virginia, 443 U.S. at 319-20, 99 S.Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 895, 87 S.Ct. 483, 486 (1966)). This standard thus preserves the fact finder’s role and responsibility “[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” Id. at 319, 99 S.Ct. at 2789. On appeal, “the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Guerrina v. State, 134 Nev. 338, 343, 419 P.3d 705, 710 (2018) (quoting Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975)).

Here, Appellant directly asks this court to re-weigh the credibility of the witnesses, which is strictly prohibited by case law. At trial, the jury found Noelani and Samantha more credible than Appellant because the totality of the evidence supported their testimony.

Appellant argues “[c]ommon sense will indicate that [the] bruise could only have been several days old, and must have been acquired while Noelani was out of town.” AOB at 11. However, there is no evidence to support Appellant’s assertion. Appellant never stated Noelani had the bruise before the incident during his testimony, and his only explanation for the bruise was that he pulled her glasses off of her face and “maybe her glasses scratched her.” 2 AA at 119. However, a scratch

from glasses is not an explanation for her dark bruise that was discolored for an entire week afterwards. Noelani, Samantha, and the reporting officer all testified to Noelani having a dark bruise on her face. The totality of the evidence supports Appellant's conviction.

Next, Appellant argues the evidence showed Appellant was only defending himself from an attack from Samantha. AOB at 11. First, Noelani and Samantha both testified that Appellant was the aggressor who grabbed Samantha by both wrists and held her. 2 AA at 27, 53. Second, there is no evidence nor cogent argument regarding self-defense. Appellant does not explain how defending himself against Samantha required hitting Noelani. The only explanation would be that it was accidental, but that would directly contradict Appellant's testimony at trial and the paragraph immediately preceding this claim that Appellant did not strike Noelani "at all." AOB at 11-12; 2 AA at 119. Thus, this claim is contradictory and meritless.

Lastly, Appellant claims the evidence did not support a charge of coercion. However, this claim is belied by the record. NRS 207.193 states Coercion is unlawfully compelling another to do or abstain from doing an act which the other person has a right to do or abstain from doing. Here, Appellant initially cornered Noelani against the door while pushing on her hands so she could not get past him. 2 AA 51-52. When Samantha intervened, he grabbed Samantha by both wrists, held them above her shoulders and pushed her. 2 AA at 53. Then, when Samantha and

Noelani attempted to escape the house, Appellant blocked the front door, attempted to grab their bags, and refused to let them leave. 2 AA at 58. These facts were presented at trial and constitute coercion. Therefore, Appellant's claim there was insufficient evidence of coercion is belied by the record.

Therefore, there was sufficient evidence presented at trial to support Appellant's conviction and Appellant's claim is meritless.

V. THERE WAS NO CUMULATIVE ERROR

Finally, Appellant alleges that the cumulative effect of the alleged errors deprived him of his right to a fair trial. AOB36. This Court considers the following factors in addressing a claim of cumulative error: (1) whether the issue of guilt is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17 (2000). Appellant must present all three elements to be successful on appeal. Id. Moreover, a defendant "is not entitled to a perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533 (1975) (*citing Michigan v. Tucker*, 417 U.S. 433 (1974)).

First, Appellant has not asserted any meritorious claims of error, and, thus, there is no error to cumulate. United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("...cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.") (emphasis added).

Second, Appellant fails to meet the standard. Here, the issue of guilt is not close because the evidence was overwhelming. Samantha and Noelani told officers and testified to the same story, even though they were interviewed separately. 2 AA at 73. Their story was supported by all relevant evidence, namely the bruising on Noelani's face. Contrarily, Appellant's defense was not supported by any evidence other than his self-serving testimony. Thus, the issue of guilt is not close. Next, there were no errors by the district court, thus this Court cannot address the quantity and character of non-existent errors. Lastly, while the crimes charged were grave, Appellant has failed to demonstrate that there were any cumulative errors that warrant reversal. All of the alleged errors are either meritless or belied by the record. Therefore, there was no cumulative error.

CONCLUSION

Wherefore, the State respectfully requests that Appellant's Judgment of Conviction be AFFIRMED.

Dated this 8th day of March, 2022.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Alexander Chen*

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 3,966 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 8th day of March, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 8, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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